



# USET

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June 29, 2023

Shalanda Young  
Director  
Office of Management and Budget  
725 17th Street, NW  
Washington, DC 20503

Re: Comments on the FY 2024 President's Budget Proposal to Shift IHS to Mandatory Appropriations

Dear Director Young,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we write in response to the Office of Management and Budget's (OMB) request for comment on the Fiscal Year (FY) 2024 President's Budget proposal to shift funding for the Indian Health Service (IHS) from discretionary to mandatory beginning in FY 2025. USET SPF has [consistently advocated for full and mandatory funding for the IHS](#), as well as other federal agencies and programs for Tribal Nations and Native peoples, as this would better reflect the United States' perpetual trust and treaty obligations. We strongly support full and mandatory funding for the IHS as a critical step forward in better delivering upon these obligations. With this in mind, we celebrate the inclusion of a detailed mandatory funding proposal in the President's FY 2024 Budget Request and stand ready to assist in capitalizing on this opportunity to make mandatory funding for IHS a reality.

USET SPF is a non-profit, inter-tribal organization advocating on behalf of thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico.<sup>1</sup> USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

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<sup>1</sup> USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Catawba Indian Nation (SC), Cayuga Nation (NY), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe–Eastern Division (VA), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mi'kmaq Nation (ME), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Monacan Indian Nation (VA), Nansemond Indian Nation (VA), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Rappahannock Tribe (VA), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), Upper Mattaponi Indian Tribe (VA) and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

*Because there is Strength in Unity*

## **Introduction**

As OMB should be aware, Tribal Nations and Native peoples have endured many injustices as a result of federal policy, including federal actions that sought to terminate Tribal Nations and strip us of our lands, culture, and resources. The policies and actions of the federal government resulted in the cession of vast land holdings and natural resources, oftentimes by force, to the United States out of which grew an obligation to provide benefits and services—promises made to Tribal Nations that exist in perpetuity. At no point, however, has the United States honored these sacred promises; including its historic and ongoing failure to prioritize funding for Indian Country. These failures have resulted in unacceptably high mortality rates among Native peoples, as well as some of the greatest health disparities across all populations in this country.

Because of our history and unique relationship with the U.S., the trust obligation of the federal government to Tribal Nations and Native peoples, as reflected in the federal budget, is fundamentally different from ordinary discretionary spending and should be mandatory in nature. As Congress continues to cap and/or cut non-defense discretionary spending in pursuit of deficit reduction, it is more important than ever that the IHS budget be shielded from the unpredictable and inadequate discretionary appropriations process through the provision of mandatory funding. Payments on debt to Indian Country should not be vulnerable to year to year “discretionary” decisions by appropriators. Rather, funding for Indian Country should instead mirror other federal entitlement spending, such as Medicare, as the U. S.’ trust and treaty obligations exist in perpetuity. USET SPF firmly believes that the IHS should receive open-ended, mandatory appropriations, as this would more fully and appropriately fulfill the U.S.’ trust and treaty obligations to Tribal Nations and Native peoples.

Below we discuss the questions and requests for input that OMB offered in the Dear Tribal Leader Letter:

### **How should mandatory funding for the IHS grow in the outyears?**

USET SPF believes that the current mandatory funding proposal, as illustrated in the FY 2024 President’s budget proposal, is incomplete and will need to be informed by Tribal Nations through consultation. This includes the growth pattern for IHS mandatory funding to keep pace with inflation and rising costs, as well as bring the agency closer to a full funding figure. As funding for the IHS currently does not keep pace with inflation, our purchasing power diminishes from year to year and the increases provided by Congress do not have their intended effect. The growth pattern must account for myriad factors, such as rising national health care costs and trends, population growth, and new technologies, as well as the unique circumstances and priorities of the Indian Health Care Delivery System. Current estimates for annual full funding for the IHS are approximately \$54 billion, per the IHS Tribal Budget Formulation Workgroup. However, these current estimates are not comprehensive, as they do not include funding necessary for services and activities like public health. To arrive at a more comprehensive and appropriate full funding figure and growth pattern, IHS must work directly with Tribal Nations to identify expanded public health costs.

To that end, the Administration must meaningfully engage with and incorporate the guidance of the IHS FY 2025 Sub-Workgroup on Mandatory Funding Appropriations for IHS. This workgroup was created to bolster and inform the mandatory funding proposal and must have the resources necessary to carry out this work. This includes access to resources such as industry experts and health economists to aid in developing a growth pattern that appropriately accounts for inflationary factors and economic indicators that affect delivery of healthcare in the Indian Health Care Delivery System. When the Workgroup has considered all these factors in collaboration with Tribal Nations and expert resources, the Workgroup’s recommendations must then be subject to rigorous Tribal consultation.

USET SPF reminds OMB that the federal government's trust and treaty obligations to Tribal Nations exist in perpetuity, regardless of the wealth and resources of individual Tribal Nations. These obligations include the responsibility of the U.S. to provide for the health and wellness of Tribal Nations and Native peoples, creating an inherent right to healthcare. Therefore, USET SPF strongly believes that mandatory funding for Indian Country should be open-ended and structured like other federal entitlement spending. Tribal Nations and Native peoples have an inherent right to healthcare services derived from the US's trust and treaty obligations, and that necessitates appropriate funding for the entities and agencies charged with providing that healthcare.

### **What are the highest priority programs and activities recommended for investment in the FY 2024 budget?**

USET SPF asserts that asking Tribal Nations to prioritize certain specific programs or services for mandatory funding is inappropriate in a chronically underfunded system, as priorities vary across Areas and Tribal Nations. Ideally, the entirety of the IHS budget would be moved to the mandatory side of the budget as soon as possible. Tribal Nations and the Indian Health System require appropriate funding levels and consistency in that funding for our programs and services that is currently lacking in the discretionary funding atmosphere. However, USET SPF acknowledges that developing and implementing a mandatory funding structure that appropriately and meaningfully incorporates the priorities of Tribal Nations will take time and effort to accomplish. In the meantime, funding for certain programs, activities, and services could be acted on immediately.

The FY 2024 President's Budget Request, alongside calling for shifting the IHS budget to mandatory funding beginning in FY 2025, calls for shifting Contract Support Costs (CSC) and 105(l) lease program funding to the mandatory side of the budget immediately. This action would free up a significant amount of funding on the discretionary side of the budget. USET SPF reminds the Administration that funding for Section 105(l) leases and CSC is a legal obligation, born out of the Indian Self-Determination and Education Assistance Act (ISDEAA) and reaffirmed by the Supreme Court of the United States in *Maniilaq Association v. Burwell*, where the Court held that Section 105(l) leases must be paid by the IHS. In order for IHS to appropriately fulfill these legal obligations, USET SPF calls for CSC and 105(l) lease funding to be immediately shifted to a mandatory, indefinite appropriation. While we contend that all federal Indian programs and agencies should be subject to mandatory appropriations, this step can and should be taken immediately, independent of the larger mandatory funding proposal, while the full proposal is developed and consulted upon.

### **How can the Administration build support for enactment of this proposal?**

As with the effort to secure Advance Appropriations for the IHS, building support for mandatory appropriations will take a collective, Administration-forward approach with close collaboration among Tribal Nations, legislators, Cabinet and other federal officials, Tribal organizations, and other stakeholders. The passage of IHS advanced appropriations came after decades of advocacy by Tribal Nations and Tribal organizations and was finally achieved through coordinated efforts between Tribal Nations, Tribal organizations, and the federal government. These efforts included vocal support for advance appropriations from high-ranking Administration officials. We expect the same commitment from the Administration to bring full and mandatory funding to fruition.

To aid in developing and moving forward a legislative vehicle for IHS mandatory appropriations, the IHS and Administration partners must swiftly convey necessary information to Congress. This includes updated information on IHS's progress in addressing recommendations from the Government Accountability Office (GAO) and other entities. IHS and its partners must also provide transparent information to lawmakers

regarding unobligated balances and funding formulas. Currently, there seems to be a fundamental misunderstanding in Congress regarding the nature of those unobligated balances and funding formulas, resulting in the belief that IHS has more resources than it does. IHS and the Administration must make concerted efforts to expeditiously provide this necessary information to Congress to create a mandatory funding proposal that will enjoy the bipartisan support required.

### **Conclusion**

USET SPF is heartened that OMB and the Administration are actively working to advance the President's FY 2024 Budget Request proposing mandatory funding for the IHS. Full and mandatory IHS funding is a long standing and long overdue Tribal priority. The convening of the IHS FY 2025 Sub-Workgroup on Mandatory Funding Appropriations is a promising first step in developing a workable proposal for IHS mandatory appropriations, and USET SPF will continue to be actively involved in this effort. However, we urge the Administration to fully commit to additional progress on the legislative proposal despite the currently less-favorable conditions in Congress. USET SPF will continue to be a dedicated, active partner in efforts to deliver a legacy of change for Tribal Nations, Native people, and the sacred trust relationship. This includes the enactment of policies that uphold our status as sovereign governments, our right to self-determination and self-governance, and honor the federal trust obligation in full. Should you have any questions or require additional information, please do not hesitate to contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at (615) 838-5906 or by e-mail at [lmalerba@usetinc.org](mailto:lmalerba@usetinc.org).

Sincerely,



Kirk Francis  
President



Kitcki A. Carroll  
Executive Director

